

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

August 24, 2001

IN RE:)	
)	
GASCO DISTRIBUTION SYSTEMS)	DOCKET NO.
ACTUAL COST ADJUSTMENT (ACA) AUDIT)	00-00998

INITIAL ORDER OF THE HEARING OFFICER
ACCEPTING PROPOSED REVISED SETTLEMENT AGREEMENT

On May 14, 2001, the Tennessee Regulatory Authority (the "Authority" or "TRA") issued an Order requiring Gasco Distribution Systems, Inc. ("Gasco" or the "Company") to show cause as to why penalties should not be imposed for Gasco's apparent failure to comply with the *Order Adopting ACA Audit Report of Authority's Staff, In Re: Gasco Distribution Systems Actual Cost Adjustment (ACA) Audit*, TRA Docket No. 99-00647 (Nov. 24, 1999). This matter is before the Hearing Officer for consideration of the parties' proposed *Revised Settlement Agreement* (the "*Revised Settlement*").¹ After careful consideration and for the reasons set forth below, the Hearing Officer accepts and approves the *Revised Settlement*.²

HISTORY OF THE CASE:

The basis for the May 2001 Show Cause Order is set forth with particularity therein and reaffirmed in the *Initial Order of The Hearing Officer Denying Gasco's Request to Dismiss Show*

¹ The *Revised Settlement* was submitted by Gasco, TRA Staff (as a party), and the Consumer Advocate and Protection Division of the Attorney General's Office on August 17, 2001. A copy of the *Revised Settlement* is attached hereto as **Exhibit A**.

² The terms of the *Revised Settlement* provide that Gasco is thereunder liable for \$12,500, with \$5,000 due and payable on or before March 31, 2002, and \$7,500 suspended pending Gasco's compliance with Authority rules, directives, and orders during a three (3) year probationary period. See *Revised Settlement*, TRA Docket No. 00-

Cause Proceeding, In Re: Gasco Distribution Systems, Inc. Actual Cost Adjustment (ACA) Audit, TRA Docket No. 00-00998 (June 11, 2001). Thus, it would be superfluous to restate with detail the same here. In sum, the TRA Staff's Actual Cost Adjustment ("ACA") Compliance Audit Report (the "2000 Report"), for the period from July 1, 1999, through June 30, 2000, contained a finding that Gasco failed to comply with the TRA Staff's 1999 ACA Compliance Audit Report (the "1999 Report") for the preceding audit period and the *Order Adopting ACA Audit Report of Authority's Staff, In Re: Gasco Distribution Systems Actual Cost Adjustment (ACA) Audit*, TRA Docket No. 99-00647 (Nov. 24, 1999), approving and adopting the 1999 Report. At the April 17, 2001, Authority Conference, the Authority unanimously approved and adopted the findings and recommendations contained in the 2000 Report.

DISCUSSION AND ANALYSIS:

Gasco agrees that it "failed to timely implement an ACA price reduction as required by the Authority's rules" and in accordance with the Authority's Order of November 24, 1999.³ Gasco's record of past performance demonstrates that it has had a history of similar violations, which Gasco does not contest. *See, e.g., Initial Order of The Hearing Officer Requiring Compliance with Authority's November 5, 1998, Order, In Re: Show Cause Proceeding Against Gasco Distribution Systems, Inc.*, TRA Docket Nos. 97-00160 and 97-00293, p. 13 (June 7, 2001) ("The current issues must be considered in light of Gasco's unfortunate history of non-compliance.").

It is unquestioned that the agency has acted with leniency concerning Gasco's past failures to comply with agency rules and orders. In fact, Gasco could have avoided a substantial

00998, p.1 (Aug. 17, 2001). It should be noted, and the parties do not disagree, that Gasco's *potential* exposure, absent this settlement, is \$18,250.

³ *Revised Settlement* at 1.

portion of the ordered fines for past violations, not at issue herein, with subsequent compliance. *See Initial Order of The Hearing Officer Requiring Compliance with Authority's November 5, 1998, Order*, TRA Docket Nos. 97-00160 and 97-00293, p. 9 (June 7, 2001) ("The Order states very succinctly that a portion of Gasco's fines would be forgiven if compliance is achieved; and, conversely, would be 'due and payable' if compliance with the Order is ignored. The *November 5, 1998, Order*, in effect, gave Gasco the 'key to the jailhouse door' when it allowed Gasco to avoid paying a portion of the fines imposed in the Order by making timely filings during the probationary period."). A directive to comply with TRA rules on a going forward basis accompanied this benevolence. *See Initial Order of The Hearing Officer*, TRA Docket Nos. 97-00160 and 97-00293, p. 8 (Oct. 1, 1998) ("[T]he Company is hereby placed on notice that compliance with TRA Rule 1220-4-1.10 is not optional or discretionary. Strict compliance is required and expected."). Gasco, again, seeks leniency.

Although, as recounted above, Gasco has found compliance to be an illusive target, it has nevertheless, in this instance, presented persuasive arguments that distinguish its instant request for leniency from its earlier entreaties; and, as such, is deserving of continuing favorable consideration. Most persuasive is Gasco's action to repair an organizational structural deficiency that Gasco has apparently concluded would not self-improve if left unchanged.

Apparently, Gasco's past failures to comply with the Authority's rules and orders were largely the responsibility of the Company's chief financial officer. The Authority has been informed that the Company's chief financial officer was discharged, principally for his repeated failure to comply with TRA rules, orders, and directives. The Company's action here is demonstrative of its willingness to correct an apparent systemic problem that, in the past, according to Gasco, thwarted its ability to comply with the Authority's rules and orders.

Additionally, Gasco has agreed that any breach of the terms of the *Revised Settlement* would trigger the payment of “[t]he entire amount of the suspended fine . . . [to] become immediately due and payable thirty (30) days following the entry of a final order which finds that Gasco has not complied with the Authority’s rules or orders.” See *Revised Settlement*, p.1. Gasco has agreed, based on this language in the *Revised Settlement*, that it will not, in the instance of a breach of the agreement, seek an extended payment plan, propose an alternative payment scheme, or otherwise move to alter, modify, or extend the terms of the *Revised Settlement*, but will, instead, pay in full consistent with the agreement. The Authority’s Staff, as a party to this proceeding, and the Consumer Advocate and Protection Division of the Attorney General’s Office, as signatories to the *Revised Settlement*, have both acknowledged their understanding, consistent with the above language, of Gasco’s agreement.

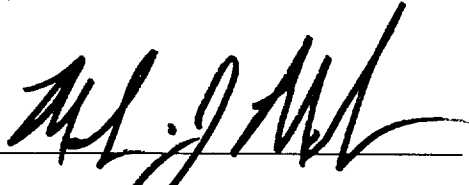
CONCLUSION:

For the foregoing reasons, the Hearing Officer finds, on the state of the record, that the *Revised Settlement* is adequately supported and appropriate, given the circumstances, and that it is consistent with the public interest. Therefore, the Hearing Officer hereby accepts and approves the *Revised Settlement* as filed.

IT IS THEREFORE ORDERED THAT:

1. The *Revised Settlement* filed on August 17, 2001, is hereby accepted and approved.
2. Any party aggrieved by the Hearing Officer’s decision in this matter may file a Petition for Reconsideration with the Hearing Officer within fifteen (15) days from the date of this Order.
3. Any party aggrieved by the decision of the Hearing Officer in this matter may file a Petition for Appeal with the Tennessee Regulatory Authority within fifteen (15) days from the date of this Order.

4. In the event this Order is not appealed to the Directors of the Tennessee Regulatory Authority within fifteen (15) days, this Order shall become final and shall be effective from the date of entry.



MELVIN J. MALONE, DIRECTOR
AS HEARING OFFICER

ATTEST:



K. David Waddell, Executive Secretary

EXHIBIT A
FILED
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BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE: GASCO DISTRIBUTION
SYSTEMS ACTUAL ADJUSTMENT
(ACA) AUDIT

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OFFICE OF THE
EXECUTIVE SECRETARY

DOCKET NO. 00-00998

REVISED SETTLEMENT AGREEMENT

The purpose of this document is to present a revised settlement among the parties to the above-captioned show cause proceeding. This filing is intended to supercede the "Proposed Settlement Agreement" filed on July 20, 2001.


During the period from November 19, 1999 through June 30, 2000, Gasco Distribution Systems, Inc. ("Gasco") failed to timely implement an ACA price reduction as required by the Authority's rules. The Staff and the Consumer Advocate Division of the Attorney General's office have requested --- and Gasco has agreed to pay --- a fine of \$12,500 subject to the following conditions. Of that amount, \$5,000 of the fine is due and payable on or before March 31, 2002. The remainder of the fine (\$7,500) would be suspended pending Gasco's continuing compliance with all TRA rules and orders for a probationary period of three years, beginning July 1, 2001, and continuing until July 1, 2004. The entire amount of the suspended fine would become immediately due and payable thirty days (30) following the entry of a final order which finds that Gasco has not complied with the Authority's rules or orders. The suspended fine will be forgiven upon demonstration of full compliance throughout the entire probationary period.

The parties recognize that Gasco also failed to timely implement an ACA price reduction as required by the Authority's rules for the period of July 1, 2000 to Nov. 30, 2000. The parties agree, however, that Gasco's failure to implement the ACA price reduction for that period will not, in and of itself, result in the issuance of a second Show Cause proceeding against Gasco, or otherwise trigger the provisions of this settlement agreement. In the event, however, Gasco subsequently violates any TRA rule or order, the Authority, Staff counsel and/or the Attorney General's office, through the Consumer Advocate and Protection Division, may seek any fines and all other appropriate remedies related to Gasco's failure to implement the ACA price reduction during that period. Gasco reserves the right to assert all appropriate defenses.

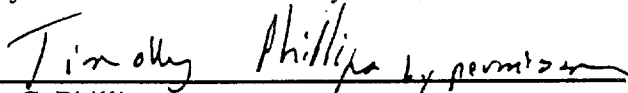
Although not a condition of the Revised Settlement, the parties took into consideration the fact that Gordon Brothers, the company's chief financial officer and the individual responsible for Gasco's compliance with the TRA's rules and orders is no longer employed by the company. According to Fred Steele, president of Gasco, the principal reason for Mr. Brother's departure was his repeated failure to file reports at the TRA and at other state regulatory commissions on a timely basis and to otherwise follow the agency's rules.

Respectfully submitted,

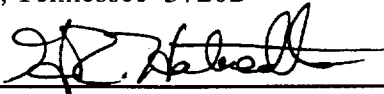
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